survivor, the husband's administrator was awarded the proceeds of the policy.

5. Policies effected by one relative on the life of another are now sustained without any evidence of direct pecuniary relations existing between them. The possible benefit which one may be supposed to anticipate from the continuance of the life of the other is sufficient without actual loss or gain. In *Ætna Insurance Co.* v. *France*, 4 Otto 561, a policy by a sister on the life of a brother, on whom she was not dependent for support or pecuniary assistance, was sustained. This extends the doctrine of *Lord* v. *Dall*, 12 Mass. 115, where the policy was taken out by a sister who was in part maintained by the brother whose life she insured. In *Kane* v. *Reserve Insurance Co.*, 3 Weekly Notes (Philada.) 201, it was decided that an adult son might effect a valid insurance on the life of his father, and in *Chisholm* v. *National Capital Ins. Co.*, 52 Mo. 213, an unmarried woman upon the life of the man to whom she was engaged to be married. In *McKee* v. *Phœnix Ins. Co.*, 28 Mo. 383, a wife effected an insurance on the life of her husband, from whom she was subsequently divorced. It was held that the policy was not thereby rendered void for want of insurable interest. *Mitchell* v. *Union Ins. Co.*, 45 Me. 104, and *Loomis* v. *Eagle Ins. Co.*, 6 Gray 396, establish the right of a parent to insure the life of his child.

R. C. D., Jr.

Supreme Court of New York.

WILLIAM HERRIES *v.* C. C. NORVELL, Impleaded, &c.

A reporter and a city editor of a newspaper are laborers or servants within the meaning of a statute making stockholders personally liable for the services of laborers and servants of the corporation.

The test as to who shall be deemed a laborer or servant within such a statute, cannot be limited to manual labor only, nor that the person shall be, through ignorance, &c., incapable of guarding himself by a contract in advance, but must vary according to the nature of the services in relation to the business.

This was an action against defendants as stockholders of a corporation, known as the "New York Republican Newspaper Association," formed under the general manufacturing law of 1848, and the amendments thereof, for "work, labor and services," performed for the corporation. The services, as the complaint alleged, were rendered as "city editor," as "assistant city editor," and as "reporter," for the newspaper published by the association. The plaintiff was the assignee of the claims of the persons rendering the services; judgment had been recovered against the association upon the claims, and execution returned unsatisfied. The defendant, Norvell, demurred to the complaint.

Denis A. Spellissy, for plaintiff.

Tompkins Westervelt, for defendant.

The opinion of the court was delivered by

VAN VORST, J.—Although there are several causes of demurrer assigned, only such will be considered as were urged upon the hearing and were argued. It is claimed by the defendant that the complaint does not state facts sufficient to constitute a cause of action, it being urged in support of the objection that the stockholders of the corporation are not liable for services rendered by a "city," or "assistant city editor," or "reporter," for the "newspaper association."

Sect. 18 of the Act of February 17th 1848, under which, and the amendments thereof, the association was incorporated, provides "that the stockholders of any company organized under this act, shall be jointly and severally, individually liable for all debts that may be due and owing to all their *laborers*, *servants* and apprentices, for services performed for such corporation."

The general subject raised by the demurrer has already had consideration in several reported cases, in some of which the section of of the act in question was considered, and in others, a kindred section, under the general railroad act.

Conant v. *Van Schaick*, 24 Barb. 86, was an action to enforce the liability of stockholders, under the 10th section of the general railroad act, which provides that all stockholders of corporations organized under that act shall be jointly and severally liable for all debts due or owing to any of its "laborers or servants" for services performed for the corporation.

The claim sought to be enforced, and which was upheld, was in plaintiff's favor for services as "civil engineer," and of a "rodman," in his employ. The court, in its opinion, GOULD, J., says, "The engineer, the master mechanic, the contractor, is as fully entitled to its benefits [that is, of the section in question], as the man who shovels gravel."

Erickson v. *Brown*, 38 Barb. 390, was under an act incorporating the Liverpool and United States Steamship Company, which provided that the stockholders should be individually liable for debts due and owing to its "laborers and operators," for services performed for the corporation. The word "servant" is not used in that act. It was held in that action that a "consulting engineer" who rendered services as such, is not within the language or policy of the act. The learned judge who delivered the opinion says: "The decision in *Conant* v. *Van Schaick* does not touch this case."

Aitken v. *Warren*, 24 N. Y. 482, holds that "a contractor" for the construction of a railroad is not a "laborer" or "servant" within the provisions of the general railroad act, making stockholders personally liable for the debts of the company.

Williamson v. *Wadsworth*, 49 Barb. 274, decides that a "civil engineer" and travelling agent at a fixed salary, is a servant of the corporation within the meaning of the 18th section of the Act of 1848. This decision is in accord with *Conant* v. *Van Schaick*, *supra*, which does not appear to have been questioned as yet.

In *Coffin* v. *Reynolds*, 37 N. Y. 640, it is held that the "secretary" of a corporation, organized under the Act of 1848, is not a laborer or servant of the corporation, within the meaning of the 18th section of the act in question. This case refers to and does not question or dissent from *Conant* v. *Van Schaick*. The decision is placed on the ground that the "secretary" is an *officer* of the company; GROVER, J., says, p. 647, "I think that neither the services of the secretary, nor those of any other officer of the corporation, comes within the section, and that a stockholder is not liable therefor."

The result reached by these decisions is, that the claimant, to hold a stockholder liable for his services, must come strictly within the denomination of a "laborer," "servant," or "operative" of the corporation, and that neither a "contractor," who undertakes to build a railroad for a corporation, nor an "officer" thereof, is such laborer or servant; and that a consulting "engineer," who renders services as *such*, is not a "laborer" or "operative," whether he comes within the denomination of "servant" or not, as it was not necessary to be decided. But on the other hand, it is decided that an "engineer"—a "civil engineer"—and travelling agent are within the terms "laborers and servants." It is reasonable to conclude that the business of the corporation, and the character of services required for its transaction, would have some influence in determining whether a given service was within the terms of the 18th section of the act.

A company, organized and operating a railroad, must needs have laborers and servants performing work different in character from that rendered by persons in the same relation for a corporation engaged in publishing a newspaper. The test cannot unalterably be that the services intended to be protected should proceed from manual effort exclusively, nor that the persons to be shielded, must

of necessity be by occasion of ignorance, incapable of guarding themselves, through contracts made in advance.

I do not think the section of the act in question, is subject to such limitations.

I will consider the services for which a claim is preferred in the action in an inverse order from that in which they stand in the complaint.

And first with regard to a "reporter." The particular services rendered by him in this case, do not appear in the complaint. The claim is for work, labor and services as reporter; the services of a reporter for a newspaper, are commonly well understood, as is the meaning of the word. His duties in reporting proceedings of courts, public meetings, legislative assemblies, and other services of a kindred character, are often laborious in the extreme, as they are responsible. His duties do not terminate with the day, but often extend into the night also. He must needs employ not only his hands constantly, but his eyes, his ears and his brain also. The value of his services to his employer depends on his fidelity to his work and the accuracy of his reports. Within the meaning of the section in question, he is truly, both a laborer for, and a servant to his employer, and is entitled to recover of the stockholders for his services as reporter for the newspaper, the success of which depends greatly on his labors. So much for the reporter.

As the ground of demurrer under consideration is that the complaint does not state facts sufficient to constitute a cause of action, and a good ground of action being found to exist, it may be considered that the demurrer is not well taken.

But in respect to the "city, or "assistant city editor," of the newspaper association, if not an officer of the corporation, which he is not averred to be, I think he is also a laborer and servant thereof within the meaning of the statute in question.

If an engineer, civil, who intelligently constructs and draws plans, or mechanical, who superintends the machinery and works of a corporation, is its servant, the editor, "city" or "assistant," employed, and whose service it is to prepare, superintend, revise and correct a newspaper, or a department thereof for publication, is within the same terms and is entitled to redress against the stockholders of the corporation employing him for his work.

As to the other ground of demurrer, that there is a defect of parties defendant, it is not well taken. The action being under

the 18th section of the act, the stockholders are jointly and severally liable.

There must be judgment for the plaintiff on the demurrer, with liberty to defendant to answer on payment of costs.

At common law a workman had a lien on goods in his possession upon which he had performed labor, and that was the extent of his preference. Such is the law at the present day, some of the states, as Arkansas, Kansas and Michigan, having enacted statutes to that effect, while the others hold such to be the law in numerous decisions. But the principle of class legislation has in recent times gone a long way beyond this. Some of the states have passed statutes giving laborers on crops, lumber and digging in mines a lien on the product of their labor, viz.: Georgia, Maine, Michigan, Minnesota, New Hampshire, North Carolina, South Carolina, Florida and Wisconsin. And all the states have passed laws which resemble each other, known as the Mechanics' Lien Law, and giving to mechanics a lien on buildings, vessels, mines and wharves, upon which they have performed work or for which they have furnished materials.

Many of the states have enacted laws exempting the wages of laborers from execution, viz.: California, Iowa, Kentucky, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, Rhode Island, Tennessee and Virginia, while Kansas on the contrary has enacted that wages due to clerks, mechanics, laborers or servants should *not* be exempted, although miners' tools and stock in trade, to the extent of $400, are.

A few states have passed laws giving a preference to the wages of laborers in the distribution of estates in the hands of assignees and trustees, viz.: California, Connecticut, Massachusetts, Missouri, New Jersey, Ohio, Pennsylvania. The last-named state, by an Act of April 9th 1872, declared that all money due for labor and services rendered by any miner, mechanic, laborer or clerk, to any person or chartered company employing clerks, miners, mechanics or laborers, either as owners, lessees, contractors, or under owners of any works, mines, manufacturing or other business where clerks, miners or mechanics are employed, shall be a lien and be preferred and be first paid out of the proceeds of the sale of any property, provided the claim does not exceed $200, and shall not impair existing contracts and liens. This statute differs from those in other states in being less general and sweeping, for while the statutes in the other states usually mentioned "laborers and operatives," this one names specifically the class of laborers, viz.: miners, mechanics, laborers or clerks performing labor in any works, mines, manufacturing or other business where clerks, miners or mechanics are employed.

Several states have enacted that either the directors or stockholders of corporations shall be liable for the wages due laborers, servants or apprentices of the corporation, as Indiana, Massachusetts, Tennessee and Michigan, which last-mentioned state enacted that the trustees of all institutions of learning should be liable for the wages of those who perform labor for the institution. As a consequence of all these statutes enacted for the protection of the laboring classes, the question has arisen in a number of the states, who is a laborer, within the provisions of the various statutes, and a number of decisions have been rendered.

In Pennsylvania we find the case of *Sullivan's Appeal*, 77 Penna. St. 107, deciding that a cook in a hotel has not

a lien and is not a laborer within the meaning of the act.

Also, the case of *Allen* v. *Fehl*, 33 Leg. Int. 366, deciding a hotel does not fall within the terms of the act, the words being "any works, mines, manufacturing or other business, where clerks, miners or laborers are employed." A hotel is plainly not within the descriptive words and was not meant to be included within the general words "or other business." These words refer to some business *ejusdem generis*, as "works, mines or manufactory," where "clerks, miners, mechanics and laborers" are employed.

Also, the case of *Solms's Estate*, 34 Leg. Int. 169, deciding a laborer on a farm is not within the meaning of the act, for the same reason. Also, *Wentroth's Appeal*, 82 Penna. St. 469, deciding a lumber contractor for a saw-mill, who did not perform the labor himself, is not within the meaning of the act.

And the case of *The Penna. Railroad Co.* v. *Leuffer*, 84 Penna. St. 168, deciding a civil engineer is not such a laborer or workman as gives him a preferred claim; Mr. Justice GORDON, in the opinion of the court saying, "in seeking the legislative intent, we must give to the language of the statute its common and ordinary signification. But ordinarily these words cannot be understood as embracing persons engaged in the learned professions, but rather such as gain their livelihood by manual toil. Worcester defines a laborer as 'one who labors; one regularly employed at some hard work; a workman, an operative, often used of one who gets a livelihood at coarse, manual labor, as distinguished from an artisan or a professional man.'"

And Mr. Justice WOODWARD said, in *Seiders's Appeal*, 46 Penna. St. 57, "by laborers we mean those who perform with their own hands the contract made with the employer." And in *Bank* v. *Gries*, 35 Penna. St. 423, deciding an architect who superintends a building as well as furnishes the plans, is a laborer within the meaning of the lien law.

In New Jersey we find a similar decision in the case of the *Mutual Benefit Ins. Co.* v. *Rowand*, 11 C. E. Green 389, which held that an architect who draws the plans and superintends the construction of a building has a valid lien for his services. The court citing Phillips on Mechanics' Liens, § 15, and *Bank* v. *Gries*, *supra*.

And in Louisiana, in the case of *Mulligan* v. *Mulligan*, 18 La. Ann. 20, the same decision was made.

In Minnesota, in the case of *Knight* v. *Norris*, 13 Minn. 473, the same decision was made, C. J. WILSON dissenting, however, on the ground that a lawyer and architect are on the same level, as, a lawyer draws the contract and the architect furnishes the plans. This view would doubtless be correct were it not for the fact that an architect to be able to recover has always, in the above-mentioned cases, been obliged to show that he superintended the construction of the building and thus performed labor in and about the building, which the lawyer does not do.

And in Nevada, in the case of *Capron* v. *Stout*, 11 Nevada 304, which was a suit to foreclose a mortgage on a mine, the foreman of a gang of miners claimed a lien or preference to be paid before the mortgage. It was held that he was within the meaning and protection of the law. The mortgagor argued that his employment being foreman was not of that kind protected by the lien law. It was said that he performed no work in or upon the mine, and it was argued that the intention of the law was to protect those only who labored with their hands.

In California, the case of *Bursee* v. *Griffith*, 34 Cal. 302, was where B., who claimed two horses were exempt from execution, was a clerk in a store, at a stated salary, and had purchased

said horses mainly to furnish employment for his son, who was seventeen years of age, and by whom the team was exclusively used in hauling freight for said store, and for other parties, and in delivering goods from said store to customers, all of which was done for the benefit of B. and his family; it was held that B. was neither a teamster nor other laborer in the statutory sense.

And in the case of *McCormick* v. *Los Angeles W. Co.*, 40 Cal. 185, it was held that a cook employed by contractors or superintendants to cook for men engaged in excavating a reservoir, had no lien; CROCKETT, J., saying, "if any lien exists, it arises not from the place where the cooking was done, but from the nature of the services and its relation to the work which was being constructed. If the plaintiff can assert a lien on the facts proved, he could as well have done so if the cooking had been performed at any other place, and if the mere fact that a person is employed to cook for the laborers engaged in erecting a building entitled him to a lien, the same result would follow if he had furnished the provisions also. On the same theory a blacksmith who shod the horses, or a graindealer who furnished them forage, whilst employed in the work, or a wagonmaker who repaired the carts, would have a lien.

In Massachusetts the statute provides that in the distribution of insolvents' estates the wages due any operative to the amount of $50, is entitled to preference. The case of *Thayer* v. *Mann*, 2 Cush. 371, was where the creditor of an insolvent debtor received material from the shop of the insolvent and worked them up into boots and then delivered them to the debtor, and it was held that he was an operative within the meaning of the act; SHAW, C. J., saying, "the word 'operative,' without more qualification than this clause contains, is not definite enough to enable us to lay down any precise general rule. Probably the primary thought which legislators had in mind was the wages due to men and women working in manufactories, who usually receive their pay weekly or monthly. But certainly it is not limited to those working for manufacturers or mechanics, or to persons working in factories, or workshops. Whether it shall extend to farm laborers, to house-servants, to persons working singly or in gangs, in woods or on marshes, or under contractors or public works at a distance from the home, both of the employer and the laborer, are all open questions. We think the policy of the statute was to secure to a class of needy and efficient laborers who are very dependent and meritorious, but who have little means of knowing the credit of their employers, the small amount due them for recent services."

So that we must conclude that much depends on the language used, and as different states have used more or less general words, so have the decisions been more or less liberal; for, in New York we find two statutes similar in purpose, but using different words. One uses the words "laborers and servants;" and the court decides a civil engineer to be within the meaning of the words (*Conant* v. *Van Schaick*, 24 Barb. 86), while the other uses the words "laborers and operatives," leaving out the word "servants;" and it was held a "consulting engineer" was not within the language of the act: *Ericson* v. *Brown*, 38 Barb. 390.

The test then as to who is a laboring man, depends primarily upon the language in the particular statute under which he asks for protection or preference, and as it is more or less general and liberal so are the decisions found to include to a greater or less extent skilled labor; and in the second place, as expressed in the opinion in the principal case, upon the character of the work in relation to the business in which it is rendered. J. F. L.